

E-filing

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 8 TIMOTHY BURCHER

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 TIMOTHY BURCHER;

12 Plaintiff,

13 CENTRAL PORTFOLIO CONTROL,
 14 INC.; DOES 1 through 10, inclusive;

15 Defendant.

Case No.:

C12-4797

JSC

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

Demand Does Not Exceed \$10,000

COMPLAINT

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Timothy Burcher, an individual consumer, against Defendant, Central Portfolio Control, Inc., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here.

III. PARTIES

3. Plaintiff, Timothy Burcher, is a natural person with a permanent residence in Antioch, Contra Costa County, California, 94509.
4. Upon information and belief the Defendant, Central Portfolio Control, Inc., is a corporation engaged in the business of collecting debt in this state and in several other states, with its principal place of business located at 6640 Shady Oak Road, Suite 300, Eden Prairie, Hennepin County, Minnesota 55344. The principal purpose of Defendant is the collection of debts in this state and several other states, and Defendant regularly attempts to collect debts alleged to be due another.
5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

- 1
2 6. The debt Defendant is attempting to collect on is an alleged obligation of a
3 consumer to pay money arising out of a transaction in which the money,
4 property, insurance or services which are the subject of the transaction are
5 primarily for personal, family, or household purposes, whether or not such
6 obligation has been reduced to judgment.
7
- 8 7. Within one (1) year preceding the date of this Complaint, Defendant, in
9 connection with the collection of the alleged debt, contact Plaintiff and
10 threatened to sue Plaintiff if a payment of 10% of the balance was not made
11 right away.
12
- 13 8. Defendant has no standing to commence legal proceedings on behalf of the
14 creditor.
15
- 16 9. Defendant is a debt collection company and as a debt collection company
17 attempting to collection an alleged debt, Defendant can only refer the matter
18 back to the creditor with a recommendation that the original creditor attempt
19 legal proceedings.
20
- 21 10. The representations made to Plaintiff by Defendant regarding legal
22 proceedings were false.
23
- 24 11. Within one (1) year preceding the date of this Complaint and during the first
25 thirty (30) days of communicating with Plaintiff, Defendant, in connection

1 with the collection of the alleged debt, demanded payment on the alleged
2 debt and thereby overshadowed the Plaintiff's right to dispute the validity of
3 the debt.

4 12. Within one (1) year preceding the date of this Complaint, Defendant, in
5 connection with the collection of the alleged debt, told Plaintiff, "Oh, just
6 shut up."

7
8 13. The natural consequences of Defendant's statements and actions was to
9 unjustly condemn and vilify Plaintiff for his non-payment of the debt he
10 allegedly owed.

11
12 14. The natural consequences of Defendant's statements and actions was to
13 produce an unpleasant and/or hostile situation between Defendant and
14 Plaintiff.

15
16 15. The natural consequences of Defendant's statements and actions was to
17 cause Plaintiff mental distress.

18 16. Defendant utilized unfair and unconscionable means to collect on Plaintiff's
19 alleged debt, by lying to and misleading Plaintiff and speaking to him in an
20 offensive and verbally abusive manner.

21
22 **V. CLAIM FOR RELIEF**

23 17. Plaintiff repeats and realleges and incorporates by reference to the foregoing
24 paragraphs.
25

1
2 18. Defendants violated the FDCPA. Defendants' violations include, but are not
3 limited to, the following:

4 (a) Defendant violated §1692d of the FDCPA by engaging in conduct
5 the natural consequences of which is to harass, oppress, or abuse
6 any person in connection with the collection of an alleged debt;
7 and
8

9 (b) Defendant violated §1692d(2) of the FDCPA by using obscene or
10 profane language or language the natural consequences of which is
11 to abuse the hear or reader in connection with the collection of an
12 alleged debt; and
13

14 (c) Defendant violated §1692e of the FDCPA by using a false,
15 deceptive, or misleading representation or means in connection
16 with the collection of the alleged debt; and
17

18 (d) Defendant violated §1692e(5) of the FDCPA by threatening to take
19 action that the Defendant does not intend to take and/or the
20 Defendant cannot legally take; and
21

22 (e) Defendant violated §1692e(10) of the FDCPA by using false
23 representation or deceptive means in connection with the collection
24 the alleged debt; and
25

1 (f) Defendant violated §1692f of the FDCPA by using unfair or
2 unconscionable means in connection with the collection of an
3 alleged debt; and

4 (g) Defendant violated §1692g(b) of the FDCPA by overshadowing or
5 being inconsistent with the disclosure of the consumer's rights to
6 dispute the debt or request the name and address of the original
7 creditor.
8

9 19. Defendant's acts as described above were done intentionally with the
10 purpose of coercing Plaintiff to pay the alleged debt.
11

12 20. As a result of the foregoing violations of the FDCPA, Defendant is liable to
13 the Plaintiff, Timothy Burcher, for declaratory judgment that Defendant's
14 conduct violated the FDCPA, actual damages, statutory damages, and costs
15 and attorney fees.
16

17
18 WHEREFORE, Plaintiff respectfully requests that judgment be entered
19 against Defendant, Central Portfolio Control, Inc., for the following:
20

21 A. Declaratory judgment that Defendant's conduct violated the FDCPA.

22 B. Actual damages.

23 C. Statutory damages pursuant to 15 U.S.C. § 1692k.

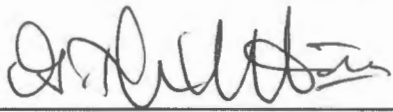
24 D. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k.
25

1
2 E. Awarding Plaintiff any pre-judgment and post-judgment interest as
3 may be allowed under the law.

4 F. For such other and further relief as the Court may deem just and
5 proper.
6

7
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9 DATED:
10 September 07, 2012

RESPECTFULLY SUBMITTED,
PRICE LAW GROUP APC

11 By: 
12 _____
13 G. Thomas Martin, III
14 Attorney for Plaintiff

15
16 **DEMAND FOR JURY TRIAL**

17 PLEASE TAKE NOTICE that Plaintiff, TIMOTHY BURCHER, demands
18 trial by jury in this action.
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